

## **REMARKS/ARGUMENTS**

### ***Amendments in General***

Claims 1 and 25 of the application have been amended to specify, in claim 1, that the sterilization cassette has at least two latch assemblies, each of which has at least one latch detent, and, in claim 25, that the container has at least two latch assemblies, each of which has at least one latch detent. These amendments add no new matter in that they are supported by the specification as originally presented. *See Specification*, ¶¶ 14, 37–38. Specifically, paragraph 14 of the specification notes that

[i]n all designs, two opposing latch assemblies are provided so that equal and opposite pressure must be applied to the latches in order to unlatch the top cover so as to open it. The purpose of providing the double latches and the requirement for equal and opposite pressure is to prevent inadvertently pushing the transport rack off the surface upon which it is resting since the use of both hands is required to open the latches.

Claims 26 through 31 have been amended to make it clear that these claims refer to the assembly of two hinges of claim 25, as opposed to the at least two latch assemblies.

Claim 32 has been canceled because claim 25, as amended, essentially incorporates the limitations that had been included in claim 32.

### ***Claim Rejections - 35 U.S.C. § 112***

The Examiner rejected claim 1 for the reason that it included the limitation “said horizontally oriented hinge portion” for which there was insufficient antecedent basis. Claim 1 as amended now introduces “a first horizontally oriented hinge” before referring to “said horizontally oriented hinge portion.” This amendment adds no new matter to the application because claim 1, as originally presented, referred to “a first horizontally oriented piano hinge.” As amended, claim 1 does not violate 35 U.S.C. § 112.

### ***Claim Rejections – 35 U.S.C. § 102***

“An applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. It is the Commissioner’s duty (acting through the examining officials) to determine that all requirements of the Patent Act are met. The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent . . . . In rejecting an application, factual determinations by the PTO must be based on a preponderance of the evidence, and legal conclusions must be correct.” *In re Oetiker*, 977 F.2d 1443, 1449, 24

USPQ2d 1443, 1447, 24 USPQ2d at 1447 (Fed. Cir. 1992) (Plager, J., concurring). Further, “[t]he precise language of 35 USC 102 that ‘a person shall be entitled to a patent unless,’ concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.” *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173 (CCPA 1967), *cert. denied*, 389 U.S. 1057, *reh’g denied*, 390 U.S. 1000 (1968).

### **Claims 25 and 30–32**

The Examiner rejected claims 25 and 30 through 32 under 35 U.S.C. § 102(b) as being anticipated by the instrument cleaning cassette with guided double hinge described in U.S. Patent Number 5,482,067 (the Wittrock patent).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.

Claim 25 has been amended to specify that the container has “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” Because they depend on claim 25, claims 30 and 31 include this limitation. (Claim 32 has been canceled.)

Wittrock describes an instrument-cleaning cassette that has two tabs that snap over the opposite wall when the frames are aligned. *See Wittrock*, col. 5, lines 58–61. Wittrock does not teach the element of claim 25, as amended, of having “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” Accordingly, each and every element of claim 25, and therefore of claims 30 and 31, is not found in Wittrock. Thus, Wittrock does not anticipate claims 25, 30, and 31.

### ***Claim Rejections - 35 U.S.C. § 103***

### **Claims 1 and 26**

The Examiner rejected claims 1 and 26 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Wittrock in view of the double hinge counter-weight cover assembly described in U.S. Patent Number 4,535,908 (the Dabich patent). The Examiner contends that modifying the instrument cleaning cassette with guided double hinge of Wittrock so as to include the features taught by Dabich would result in the present invention, with each and every element thereof.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” MPEP § 706.02(j).

As for the obviousness rejection of claim 1, claim 1 has been amended to specify that the sterilization cassette has “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” Applicant respectfully contends that claim 1, as amended, is not obvious over Wittrock in view of Dabich.

In this case, Wittrock and Dabich, when combined, do not teach or suggest all of the claim limitations of claim 1. That is, Wittrock and Dabich, when combined, do not teach or suggest a cassette having “at least two latch assemblies, each of said latch assemblies having at least one latch detent.”

As noted above, Wittrock describes an instrument-cleaning cassette that has two tabs that snap over the opposite wall when the frames are aligned. *See Wittrock patent*, Col. 5, lines 58–61. Thus, Wittrock does not teach the element of claim 1, as amended, of having “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” Further, there is no motivation in Wittrock to modify its cassette so as to include at least two latch assemblies each having at least one latch detent. After all, the Wittrock cassette as designed may be opened with only one hand. There is no motivation to modify it so that more than one hand must be used to open the cassette, which would be the result of modifying the Wittrock cassette to include “at least two latch assemblies, each of said latch assemblies having at least one latch detent.”

Dabich describes a double hinge counter-weight cover assembly, an invention that “relates to heavy lids for subsurface enclosures, and particularly to lids on pre-fabricated pits designed for use in servicing aircraft, etc. at docking, loading and refueling terminals.” *Dabich*, col. 1, lines 11–14. While Applicant continues to disagree with the Examiner’s obviousness rejection based on Dabich, particularly to the extent the Examiner maintains that Dabich is analogous art to Applicant’s invention, *see Sept. 18, 2006, Response to Office Action Mailed June 6, 2006*, pp. 8–9, Applicant further respectfully contends that even if Dabich is analogous art, claim 1, as amended, is not obvious. The double hinge counter-weight cover assembly of Dabich does not contain any latches and is specifically designed to be opened using only one hand. *See Dabich*, col. 4, lines 32–33 (“The lid 20 can be opened with one hand by most users.”). Accordingly, Dabich does not contain the element of claim 1 as amended of “at least

two latch assemblies, each of said latch assemblies having at least one latch detent,” nor is there any motivation or suggestion for the inclusion of such an element in Dabich.

Because neither Wittrock nor Dabich include “at least two latch assemblies, each of said latch assemblies having at least one latch detent,” Wittrock and Dabich, when combined, do not teach or suggest all the claim limitations of claim 1 as amended. Accordingly, Applicant respectfully contends that claim 1, as amended, is not obvious over Wittrock in view of Dabich.

As to the obviousness rejection of claim 26, claim 26 depends on claim 25, which has been amended to include an element of having “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” This amendment is essentially the same as that made to claim 1. Accordingly, for the same reasons that claim 1 as amended is not obvious over Wittrock in view of Dabich, claim 26 is not obvious over Wittrock in view of Dabich, due to claim 26’s dependence on claim 25 as amended.

#### **Claim 27**

The Examiner rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Wittrock in view of the disposable syringe needle separation and storage box described in U.S. Patent Number 4,576,281 (the Kirksey patent). The Examiner contends that modifying the instrument cleaning cassette with guided double hinge of Wittrock so as to include the features taught by Kirksey would result in the present invention, with each and every element thereof.

Claim 27 depends on claim 25. As noted above, claim 25 has been amended to include the element of “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” In light of this amendment, Applicant respectfully contends that claim 27, because of its dependence on claim 25 as amended, is not obvious over Wittrock in view of Kirksey.

As explained before, the cassette in Wittrock does not contain “at least two latch assemblies, each of said latch assemblies having at least one latch detent,” nor is there any suggestion or motivation for the inclusion of such latch assemblies. Likewise, Kirksey does not contain “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” Further, there is no motivation or suggestion to modify Kirksey to include such an element.

Because neither Wittrock nor Kirksey include “at least two latch assemblies, each of said latch assemblies having at least one latch detent,” Wittrock and Kirksey, when combined, do not teach or suggest all the claim limitations of claim 25, as amended, and therefore do not teach or suggest all the claim limitations of claim 27. Accordingly, Applicant respectfully contends that

claim 27, in light of the amendments to claim 25, is not obvious over Wittrock in view of Kirksey.

**Claims 28–29**

The Examiner rejected claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Wittrock in view of the double hinge cap described in U.S. Patent Number 4,723,693 (the DeCoster patent). The Examiner contends that modifying the instrument cleaning cassette with guided double hinge of Wittrock so as to include the features taught by DeCoster would result in the present invention, with each and every element thereof.

Claims 28 and 29 depend on claim 25. As noted above, claim 25 has been amended to include the element of “at least two latch assemblies, each of said latch assemblies having at least one latch detent.” In light of this amendment, Applicant respectfully contends that claims 28 and 29, because of their dependence on claim 25, as amended, are not obvious over Wittrock in view of DeCoster.

As discussed above, Wittrock does not contain the element of “at least two latch assemblies, each of said latch assemblies having at least one latch detent,” nor any motivation or suggestion to include such an element. Likewise, the double hinge cap described in the DeCoster patent does not have any latch assemblies, nor is there any motivation or suggestion to include latches, particularly because one benefit of the DeCoster cap is that “[n]o mechanical interlock, for example of the type requiring engagement of protrusions within niches, is required.” *DeCoster*, cols. 1–2.

Because neither Wittrock nor DeCoster include “at least two latch assemblies, each of said latch assemblies having at least one latch detent,” Wittrock and DeCoster, when combined, do not teach or suggest all the claim limitations of claim 25, as amended, and therefore do not teach or suggest all the claim limitations of claims 28 and 29. Accordingly, Applicant respectfully contends that claims 28 and 29, in light of the amendments to claim 25, are not obvious over Wittrock in view of DeCoster.

In view of the above remarks and amendments, which add no new matter, Applicant respectfully submits that the present invention is patentable and respectfully requests the same.

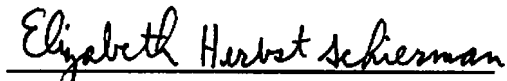
***Conclusion***

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 20<sup>th</sup> day of February, 2007.

Very respectfully,

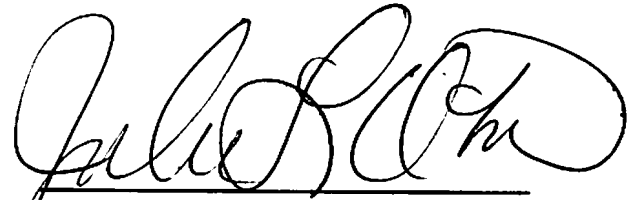
  
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